



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 9, 1998

Mr. Joe Bridges
Assistant District Attorney
Denton County Criminal District Attorney's Office
Counsel to Sheriff
127 North Woodrow Lane
Denton, Texas 76205

OR98-3011

Dear Mr. Bridges:

You ask this office to reconsider our decision in Open Records Letter No. 98-2071 (1998). Your request for reconsideration was assigned ID# 120241.

Open Records Letter No. 98-2071, which concerned three requests for the cellular telephone records of three members of the North Central Texas Narcotics Task Force and a list of all non-undercover officers on the task force, determined that, based on section 552.108 of the Government Code, the Denton County Sheriff's Department (the "department") may withhold the names of the undercover officers and the cellular telephone numbers assigned to those individuals with specific law enforcement responsibilities. *See* Open Records Decision No. 506 (1988). The ruling also determined that, as the department had not sufficiently explained how release of the telephone numbers of incoming and outgoing calls interferes with law enforcement, the department must release such numbers.

You now seek to withhold from public disclosure the telephone numbers of undercover officers or contacts, informants and law enforcement officers' residences called from the cellular telephone assigned to non-undercover members of the Drug Task Force based on sections 552.108 and 552.117. You have marked these numbers and particularized your arguments for each number you seek to withhold from disclosure. *See* Open Records Decision No. 636 (1995).

Section 552.108(a)(1) excepts from disclosure information that interferes with the detection, investigation or prosecution of crime. Section 552.101, which the attorney general may raise on behalf of a government body, excepts from disclosure information deemed confidential by law, including information protected from disclosure based on the common-

law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Public employee address information is excepted from disclosure as private information when special circumstances, such as an imminent threat of physical danger, exist. *See* Open Records Decision No. 169 (1977). Section 552.117 excepts from disclosure, among other things, the home telephone number of a peace officer or a security officer.¹ You state that

[d]ue to the extreme danger inherent [in] undercover narcotics investigation[s], the informants, witnesses, and undercover officers would be subject to discovery if these telephone records were to be deemed an open record. The lives of the officer, the lives of their families, and the lives of the informants/witnesses could be placed in danger if their telephone numbers or names were to be released, thereby identifying them as a police officer or someone who is cooperating with the authorities.

Although your arguments were not made timely,² in this instance, we are compelled to conclude that the department may withhold the numbers from disclosure based on sections 552.101 and 552.117 of the Government Code. *See* Open Records Decision Nos. 150 (1977) (presumption overcome where third party interests are at issue); *see also* Open Records Decision No. 169 (1977).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Deputy Chief
Open Records Division

KHH/ch

¹A peace officer is defined by article 2.12 of the Code of Criminal Procedure and a security officer for purposes of section 552.117 refers to a security officer commissioned under section 51.212 of the Education Code.

²*See* Gov't Code §§552.301-.303.

Ref.: ID# 120241

Enclosures: Submitted documents

cc: Mr. Charles Siderius
Denton Record Chronicle
P.O. Box 369
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(w/o enclosures)